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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,516	01/27/2004	Raymond Aubin	71493-1210-aba	9954

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EXAMINER	
PASCAL, LESLIE C	
ART UNIT	PAPER NUMBER
2613	

NOTIFICATION DATE	DELIVERY MODE
03/26/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

us.mail@smart-biggar.ca

Office Action Summary	Application No.	Applicant(s)	
	10/764,516	AUBIN ET AL.	
	Examiner	Art Unit	
	Leslie Pascal	2613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 September 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) *10,12-16,26 and 28-32* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,8,17 and 24* is/are rejected.

7)☒ Claim(s) *2-7,9,11,18-23,25 and 27* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 8, 17, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rappaport et al (2005/0043933) in view of Ghani et al ("On IP-over-WDM Integration", of record).

Rappaport et al teach that it is well known to model or simulate in order to make predictions about a network. See paragraph 23. He teaches the simulated model can be for network(s). He teaches that he is concerned with capacity. Capacity is also a well known need when predicting network performance. Although Rappaport et al does not specifically teach a packet network and an optical network, in paragraph 93 he mentions packets and optical frequency bands and protocols. See figures 2 and 3 of Ghani et al. In figure 2 he shows a network comprised of a packet network and an optical network. In figure 3 he shows inputs which determine characteristics of the network. It would have been obvious to simulate the optical and packet networks of Ghani et al as taught by Rappaport et al in order to make performance predictions about the network. In regard to the packet network topology information, at the top of figure 3 of Ghani et al to the far left, he inputs "data network topology". In regard to the packet traffic information, see the top of figure 3 of Ghani et al to the far left, he inputs "user demands/traffic profiles" which would obviously include packet information. In regard to

the optical network topology information, at the bottom of figure 3 of Ghani et al to the far left, he inputs “data network topology”. In regard to the generating a basic optical capacity, see the top right portion of figure 3 of Ghani et al. He teaches using an optimization algorithm to determine data flow routes and light path channel routes. In that he uses outputs from all of the inputs to the packet and optical network; it would have been obvious to determine capacity based on this information.

3. In regard to the applicants’ arguments that the prior art does not teach the claimed subject matter. Paragraph 93 or Rappaport et al pointed out in the previous office action says, "Alternatively, network system performance prediction results may be computed in a particular environment where two or more different communication systems are modeled to provide network connectivity within the environment”. This section teaches modeling together two different communication systems may be connected together. This would include a packet network and an optical network as taught by Ghani et al. It is well known to determine capacity of a system while designing a system which can be done by modeling in order to provide the greatest efficiency. The applicant argues that Ghani et al is intended to be used in an actual network topology for routing data. See the conclusion of Ghani et al. They say, “In light of these developments, there is an increasing important need to design a reliable control (access) layer for WDM networks with a focus on IP protocols internetworking.” They teach provisioning (which is a requirement of capacity). Rappaport et al were used to teach that it is well known to simulate (model) a system which combines two networks. He teaches that the systems can be packet and wavelength. Ghani et al is used to teach provisioning in a network which combines packet and optical networks. The combination of Rapapport and Ghani are used to teach that it is well known to simulate a network which has two systems (paragraph 93). And Ghani et al is used to teach that capacity of systems is determined in order to provision. One of the most important features when designing a network at present is CAPACITY. Before anyone designs a system, they determine capacity of each section and link in order to provide the most financially useful network. It is well known to model/simulate a network before designing it in order to provide the most efficient system which relates to capacity.

4. Claims 2-7, 9, 11, 18-23, 25 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Pascal whose telephone number is 571-272-3032. The examiner can normally be reached on Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on 571-272-3078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Pascal/
Primary Examiner
Art Unit 2613